

SURPLUS LINES BROKER

In general, it is against the law for anyone to place business with an unauthorized insurer. However, certain insurance coverages that are not available in Kentucky from authorized insurers may be purchased from unauthorized insurers but only through licensed surplus lines brokers and only under certain circumstances. The conditions for export are set out in KRS 304.10-040.

Also, surplus lines brokers may accept and place surplus lines business for any agent licensed in Kentucky for the kind of insurance involved and may compensate the agent.

Warning – Requirements and restrictions, which are known as the Surplus Lines Law, are found in KRS 304.10-020 through 304.10-210. The licensee should refer to this section of the Kentucky Insurance Code for details including conditions for export, broker's affidavit, eligible surplus lines insurers, evidence of insurance, endorsements, records, annual statement, and taxes. Licensed surplus lines brokers will be held to compliance with these statutes as well as to all other applicable provisions in the Insurance Code.

Exceptions – The Surplus Lines Law does not apply to

- Reinsurance; and
- The following lines of insurance when placed by agents or surplus lines brokers licensed in Kentucky:
 - Ocean marine and foreign trade insurance,
 - Insurance on subjects located, resident, or to be performed wholly outside of Kentucky or on vehicles or aircraft owned and principally garaged outside Kentucky,
 - Insurance on railroads engaged in interstate commerce, and
 - Insurance on aircraft used by aircraft manufacturers or in commercial interstate flight or insurance against liability, other than workers' compensation, arising out of the use of this aircraft.

INDIVIDUAL RESIDENT SURPLUS LINES BROKER

An individual may be issued a surplus lines broker license if the applicant meets the requirements of KRS 304.10-120.

QUALIFICATIONS – The applicant must

- Be a resident licensed agent with property and casualty lines of authority
- Be deemed by the commissioner to be competent and trustworthy with respect to the handling of surplus lines
- Be financially responsible

APPLICATION – The Department must receive the following to process the individual's application:

- Individual License Application – **Form 8301**
- Proof of financial responsibility in any one or more of the prescribed forms
 - Errors & Omissions policy – **Form 99-1**
 - Letter of Credit – **Form 99-2**
 - Surety Bond – **Form 99-3**
- Penal Bond – **Form 99-9**
- Fee

FEES – The individual must remit \$100 fee for the surplus lines broker license.

PRELICENSING TRAINING – None is required for a surplus lines broker license. The applicant will have had prelicensing training before being issued the prerequisite agent license.

EXAMINATION – None is required for a surplus lines broker license. The applicant will have had the appropriate examinations before being issued the prerequisite agent license.

FINANCIAL RESPONSIBILITY – Before being granted a surplus lines broker license and for as long as the license remains in effect the individual must keep in force

- Evidence of financial responsibility in the sum not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate in the form of one of the following or a combination of a bond and a letter of credit:
 - An errors and omissions liability policy issued by an authorized insurer that covers the surplus lines broker for not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate (Form 99-1)
 - A letter of credit from a qualified financial institution for \$2,000,000 (Form 99-2)
 - A surety bond issued by an authorized insurer for \$2,000,000 (Form 99-3)
- **And**, a penal bond (Form 99-9) issued by an authorized insurer for \$50,000 in favor of the Commonwealth of Kentucky guaranteeing that the surplus lines broker will conduct business under the license in accordance with the provisions of KRS 304 Subtitle 10 and will promptly remit the quarterly taxes required by KRS 304.10-180.

If at any time the surplus lines broker's proof of financial responsibility lapses for any reason, the surplus lines broker license will terminate by act of law. Details about the timely replacement of financial responsibility, which is being cancelled, are set out in 806 KAR 9:210.

ADDITIONAL LINES OF AUTHORITY – No additional lines of authority are available under a surplus line broker license. Rather, the lines of authority under the prerequisite agent license will determine both the types of appointing insurers and the kinds of insurance products available to the surplus lines broker through the agent license.

SUBSEQUENT APPOINTMENTS – The surplus lines broker does not have appointments as a surplus lines broker. Rather, the appointments are related to the prerequisite agent license.

LICENSE RENEWAL – The surplus lines broker license continues in force until expired, suspended, revoked, or otherwise terminated if the licensee makes a written request for continuation and the \$100 renewal fee is paid by the end of his or her birth month in

- Odd years for surplus lines broker born in an odd year, and
- Even years for surplus lines broker born in an even year.

At least 30 days before the renewal deadline, the Department sends an invoice to the surplus lines broker for \$100 for the license renewal. All licensees are responsible for their own individual renewal request and payment.

CONTINUING EDUCATION – None is required for a surplus lines broker license. However, the surplus lines broker will have to satisfy the continuing education requirements imposed on the prerequisite agent license.

INDIVIDUAL NONRESIDENT SURPLUS LINES BROKER

A nonresident individual may be issued a surplus lines broker license if the applicant meets the requirements of

- KRS 304.9-140 if the applicant holds a surplus lines broker license in a reciprocal state OR
- KRS 304.10-120 if the applicant is not licensed in a reciprocal state or if Kentucky is the home state. (See the requirements in the prior section for Individual Resident Surplus Lines Broker.)

QUALIFICATIONS under **KRS 304.9-140** – Unless denied a license under KRS 304.9-440, the nonresident individual applying for a surplus lines broker license must

- Hold a substantially similar license as a resident and be in good standing in his or her home state
- Hold the resident license from a home state that awards nonresident licenses to Kentucky residents on the same basis
- Submit the proper request for license
- Pay the applicable fees

APPLICATION – The Department must receive the following to process the individual's application:

- Individual License Application – **Form 8301**
- Certificate of Good Standing from home state
- If assumed name, copies of Certificate of Assumed Name filed with each Kentucky County Clerk where intends to transact business
- Fee

FEES – The individual must remit \$100 fee for the surplus lines broker license.

PRELICENSING TRAINING – None is required for a surplus lines broker license.

EXAMINATION – None is required for a surplus lines broker license.

FINANCIAL RESPONSIBILITY – At this time, none is required of nonresident surplus lines brokers. However, proof of financial responsibility may be imposed on nonresidents in the future if it is determined by federal agencies that the Gramm-Leach-Bliley Act allows states to impose this requirement on nonresidents.

ADDITIONAL LINES OF AUTHORITY – No additional lines of authority are available under a surplus line broker license.

SUBSEQUENT APPOINTMENTS – The surplus lines broker does not have appointments as a surplus lines broker.

LICENSE RENEWAL – The surplus lines broker license continues in force until expired, suspended, revoked, or otherwise terminated if the surplus lines broker makes a written request for continuation and the \$100 renewal fee is paid by the end of his or her birth month in

- Odd years for licensee born in an odd year, and
- Even years for licensee born in an even year.

CONTINUING EDUCATION – None is required for a surplus lines broker license.

WARNING – The **NONRESIDENT surplus lines broker does not have to have a Kentucky agent license with property and casualty lines of authority in order to exercise the Kentucky surplus lines broker license. However, the affidavit required by KRS 304.10-050 must clearly demonstrate the manner in which diligent effort was made to determine coverage was not procurable from authorized insurers.**

BUSINESS ENTITY RESIDENT AND NONRESIDENT SURPLUS LINES BROKER

Business entities are not eligible to be licensed in Kentucky as surplus lines brokers.